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Supreme Court, U.S.
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No. 03-9046

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,

Petitioner,

v.

DOUGLAS WEBER, WARDEN
SOUTH DAKOTA STATE PENITENTIARY,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OR CERTIORARI

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QUESTIONS PRESENTED

-- CAPITAL CASE --

1. May a federal court stay, rather than dismiss, a habeas application by a prisoner convicted before a state court (28 U.S.C. § 2254) where the petition includes both exhausted and unexhausted claims, and where the Petitioner had a full opportunity to present the claims to the State court, but failed to do so, and where the State prisoner has the present right to pursue exhausted claims in federal court?

2. Is the Eighth Circuit rule, which requires a state prisoner to present all federal constitutional claims that the prisoner may have to the state courts at the first available opportunity, while still permitting the state prisoner to assert exhausted claims before the federal court, the correct rule, in accord with Rose v. Lundy, 455 U.S. 509 (1982) and Duncan v. Walker, 533 U.S. 167 (2001)?

LIST OF PARTIES

The parties to this case are Charles Russell Rhines, Petitioner, held under sentence of death by the State of South Dakota, and his custodian, Douglas Weber, Warden, South Dakota State Penitentiary, Sioux Falls, South Dakota.

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CITATIONS TO OPINIONS

The district court decision, District of South Dakota, Western Division, the Honorable Karen E. Schreier presiding, is unreported. It is found in Tab 1 of the Petition to the Appendix, (hereinafter Pet. App.). The present case arises from the appeal to the Eighth Circuit, which reversed the District Court decision. This Eighth Circuit decision is reported at Rhines v. Weber, 346 F.3d 799 (8th Cir. 2003), reh'g denied, No. 02-2990 (8th Cir. Nov. 24, 2003). This Eighth Circuit case is set forth in Pet. App. Tab 2. Petitioner also includes the ruling of Akins v. Kinney, 341 F.3d 681 (8th Cir. 2003) as Tab 3 in Pet. App. The Eighth Circuit incorporated the rationale of Akins into its Rhines decision.

State court decisions include State v. Rhines, 1996 S.D. 55, 548 N.W.2d 415, which is set forth at Pet. App. Tab 4 and is the affirmance of Petitioner's state conviction and death sentence. The case of Rhines v. Weber, 2000 S.D. 19, 608 N.W.2d 303 is Tab 5 of Pet. App. This case is the denial of post-conviction habeas corpus relief by the South Dakota Supreme Court.

JURISDICTION

The Petition for Certiorari is timely. The Eighth Circuit denied the Petition for Rehearing on November 24, 2003, and Petitioner filed the Petition on February 19, 2004. Petition at 10. Jurisdiction is based upon 28 U.S.C. § 1254(1).

PROVISIONS OF LAW

28 U.S.C. § 2244 provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2254, State custody; remedies in Federal courts provides:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

. . . .

STATEMENT OF THE CASE

In this case, Petitioner seeks habeas corpus relief from the federal courts after both his direct appeal and his state habeas corpus application were denied. The United States District Court, District of South Dakota, Western Division, held that the petition contained both exhausted and unexhausted claims, but that the petition should be held in abeyance, and not dismissed, pending exhaustion of certain claims before the state courts.

The United States Court of Appeals for the Eighth Circuit assumed the correctness of the District Court's holding that there were both exhausted and unexhausted claims, but reversed the District Court's ruling that the petition could be held in abeyance pending exhaustion of state court remedies, and

remanded so that Petitioner could determine whether he wished to have the petition dismissed, or pursue his federal habeas remedy on those issues that had already been exhausted before the State courts.

1. Facts of the Crime.

The facts of the crime are taken primarily from the South Dakota Supreme Court Decision on direct appeal, found at Pet. App. 5. Although the Petition Appendix is not separately numbered, finding the location of passages in the case can be accomplished by citation to the page of the Northwest Second Reporter where the passage appears as well as to the paragraph number.

From the latter part of 1991 through February of 1992, Petitioner worked at the Dig'em Donut Shop on West Main in Rapid City, South Dakota. Petitioner was fired in February of 1992. State v. Rhines, 1996 S.D. 55, ¶ 1, 548 N.W.2d 415, 424 (hereinafter Rhines). The body of Donnivan Schaefer, an employee at the donut shop, was found in the storeroom. His hands were bound, and he had been repeatedly stabbed. Approximately $3,300 in cash, coins, and checks were missing from the donut shop. Id. at ¶ 2, 548 N.W.2d at 424.

Petitioner later confessed to killing Donnivan. He told the police that while he was burglarizing the donut shop, Donnivan unexpectedly appeared. Rhines, 1996 S.D. 55, ¶ 158, 548 N.W.2d at 451. When he encountered Donnivan, Petitioner stabbed him in the abdomen. Donnivan fell down, thrashed about,

and screamed Petitioner's name. Petitioner then stabbed him again in the back, piercing his left lung. Id. At this time, Petitioner could hear air whistling out of the wound in Donnivan's back. His victim assured Petitioner that he would tell no one of the burglary, and begged Petitioner to spare his life. Id. Petitioner then walked Donnivan to the storeroom in the back of the donut shop, where his body was later found. He placed Donnivan's head between his knees, and forcefully thrust the knife into the base of his skull. Petitioner's claim was that Donnivan continued to breathe and his arms were moving, so he tied the victim's hands behind his back. Id. Petitioner referred to his final blow as the "coup de grace." Id. at ¶ 162, 548 N.W.2d at 452. The South Dakota Supreme Court found that Donnivan's hands may well have been tied behind his back before this final blow was inflicted. Id. The South Dakota Supreme Court found the evidence sufficient to show, among other things, torture. Id.

In conducting its proportionality review, the South Dakota Supreme Court detailed the brutality of the slaying, together with the cold-blooded, unfeeling, uncaring attitude of Petitioner. "His arrogant and cold-blooded attitude toward his offense was made shockingly apparent in his own words and in his own voice." Rhines, 1996 S.D. 55, ¶ 208, 548 N.W.2d at 458. When interrogating officers informed Petitioner that a pathologist had suggested that the victim might have been tied up before the last stab wound, Petitioner responded, "Too bad he

wasn't there. To watch.", and then Petitioner burst into laughter. Id. at ¶ 208, 548 N.W.2d at 458. In explaining Donnivan's movements after the fatal wound, Petitioner compared him to a butchered chicken. Id. Petitioner laughed intermittently throughout the law enforcement interview, and did not spontaneously express any feeling of remorse. Id. When asked whether he was sorry that Donnivan was dead, Petitioner replied "Yeah" and then proceeded to explain to the officers that he wanted to "get off." Id.

2. History of the Proceedings.

Petitioner was charged with the burglary and murder described above. Id. at ¶ 3, 548 N.W. 2d at 424. Trial commenced January 4, 1993. The jury found Petitioner guilty of first degree murder and third degree burglary on January 22, 1993. App. 22. The same jury sentenced Petitioner to death by lethal injection for the first degree murder conviction, finding the existence of four separate aggravating factors. App. 22.

Petitioner appealed to the South Dakota Supreme Court. That court affirmed, Rhines, 1996 S.D. 55, 548 N.W.2d 415. The court did find that one of the four aggravating circumstances was invalid, but found further that this invalidity did not so taint the penalty proceedings as to mandate reversal of the death sentence. Id. at ¶ 169, 548 N.W.2d at 453. This Court denied certiorari. Rhines v. South Dakota, 519 U.S. 1013 (1996).

Petitioner then sought habeas corpus relief in the state circuit court. App. 1. The state trial court denied relief, and the South Dakota Supreme Court affirmed. Rhines v. Weber, 2000 S.D. 19, 608 N.W.2d 303. The South Dakota Supreme Court found that there was no ineffective assistance of counsel, reiterated its holding on direct appeal, and also upheld its previous finding that consideration of an invalid aggravating circumstance was harmless error. Id.

Petitioner next sought habeas corpus relief from the United States District Court of the District of South Dakota. App. 10. The District Court, the Honorable Karen E. Schreier, extended a stay of execution and made various procedural orders. Although the District Court did not rule on the merits, it did hold that it would retain jurisdiction over the case while Petitioner returned to state court to exhaust remedies on issues that he did not earlier bring to the state court. Pet. App. 1.

Respondent appealed to the United States Court of Appeals for the Eighth Circuit, which cited its case of Akins v. Kinney, 341 F.3d 681 (8th Cir. 2003) for the proposition that the District Court was required to either dismiss the case or Petitioner was required to proceed on those issues that had been exhausted in the state courts. Petitioner requested rehearing, which the Eighth Circuit denied on November 24, 2003. Petitioner filed his Petition in this Court on February 19, 2004.

REASONS FOR DENYING THE WRIT

While conflict exists between the decision of the Eighth Circuit in this case and the decisions of other circuit courts of appeal, the Eighth Circuit decision was a correct interpretation. Certiorari should, therefore, be denied.

The Eighth Circuit ruling below was concise. See Pet. App. 2. The Eighth Circuit held that it had jurisdiction under the collateral order doctrine to review the matter, and then held that its ruling in Akins, 341 F.3d at 685-87 precluded a stay where a petition contained both exhausted and unexhausted claims. Since there could be no stay, the Eighth Circuit reversed the district court order granting such a stay and remanded for a determination of whether Petitioner would delete unexhausted claims while proceeding only on the claims he believed to be fully exhausted. The Eighth Circuit also held that Petitioner might elect to forgo further state court proceedings, in which case he would presumably proceed on all claims in the federal habeas action and contest any argument that the unexhausted claims were procedurally barred in state court. The Eighth Circuit felt that these issues were better addressed initially by the District Court and remanded the case for further consideration.

The State does not contest Petitioner's argument that this ruling conflicts with rulings of various federal courts of appeals, many of which are cited in the petition. The Eighth Circuit in Akins, 341 F.3d at 685-86, cited cases from the

first, sixth, seventh, and ninth circuits, which it acknowledged to be in conflict with its decision. The petition also cites a case from the Second Circuit, Zarvela v. Artuz, 254 F.3d 374, 379 (2d Cir.) cert, denied, 534 U.S. 1015 (2001), which also appears to be in conflict with the Eighth Circuit decision.

This Court has granted certiorari in Pliler v. Ford, No. 03-221, a case in which the Ninth Circuit approved a process of staying and holding in abeyance a habeas petition containing both exhausted and unexhausted claims while petitioner attempts to further exhaust state remedies. Also pending before this Court are Adams v. Brambles, No. 03-357, Pliler v. Hunt, No. 03-520, Alameida v. Smith, No. 03-699, and Akins v. Kinney, No. 03-7339, the case that the Eighth Circuit cited as controlling precedent in this case. The Court has also denied certiorari in several cases raising the same question, including Zarvela, 254 F.3d at 380, cert. denied, 534 U.S. 1015 (2001) and Freeman v. Page, 208 F.3d 572, 577 (7th Cir.), cert. denied, 531 U.S. 946 (2000). Respondent acknowledges further that this case squarely raises the issue. Both parties agree that the habeas petition before the district court in this case contains both exhausted and unexhausted claims, although they disagree as to which claims are exhausted or unexhausted.

This Court has granted certiorari in Pliler v. Ford, which apparently raises the same issue. Respondent argues, however, that certiorari should be denied in this case because the Eighth Circuit has correctly resolved the issue.

The seminal case on the issue of the AEDPA statute of limitations is Duncan v. Walker, 533 U.S. 167 (2001). In Duncan, this Court held that the AEDPA statute of limitations, 28 U.S.C. § 2244(d)(2), should be read literally. When so read, the time during which a federal habeas petition has been pending is not excluded from the one-year statute of limitations. Rather, only such time as passed while Petitioner had a post-conviction petition pending before state courts will be excluded. Duncan, 533 U.S. at 172-74. In Duncan, the Court reserved the issue of whether a petition containing both exhausted and unexhausted claims could be held in abeyance rather than being dismissed. 533 U.S. at 181. This procedure was suggested by Justice Stevens in a concurrence. Duncan, 533 U.S. at 183. While the Court expressly reserved the issue, its language makes it plain that one purpose of the statute of limitations was encouraging litigants to pursue claims in the state courts as early as possible, and specifically to seek state relief prior to seeking federal collateral review. Id. at 180. Petitioner's proposed rule would eviscerate and render meaningless the one-year statute of limitations. Under Petitioner's interpretation, he would not be required to first exhaust state remedies and then file a federal habeas petition as soon as possible, as this Court found to be the purpose of the statute. Id. at 180. Rather, the requirement to first exhaust state remedies would be effectively abolished. Petitioner could file his federal habeas petition, have the

district court hold it in abeyance, and then return to state court to exhaust state remedies. This procedure is exactly the reverse of that required by this Court in Duncan.

Further, the holding of Duncan was that filing a federal habeas petition does not toll the AEDPA statute of limitations. Adopting Petitioner's argument would nullify this holding. Petitioner could file a federal habeas petition at any time, either before or after filing a state habeas corpus petition, so long as there was not at least one year when he had no proceeding pending in state court. The district court could then hold the petition in abeyance for an undetermined time while Petitioner exhausted state remedies. The petition would remain filed in the federal court during this entire time. Since there would be a petition on file in federal court, the statute of limitations would not run. There would be a federal petition on file, in contravention of this Court's directive that litigants first exhaust state remedies and then file federal habeas petitions as soon as possible. Duncan, 533 U.S. at 180. There would be no requirement that the Petitioner first exhaust state remedies before coming to federal court, in contravention of Duncan. Exhaustion could occur either before or after a filing in federal court. The adoption of Petitioner's argument would thus encourage and foster unlimited delay in the resolution of petitions containing both exhausted and unexhausted claims.

While some members of the Court have observed that a petitioner would not want to delay the resolution of his case, Duncan, 533 U.S. at 191 (Breyer, J., dissenting), delay is definitely the friend of those prisoners, such as Petitioner, who are under sentence of death. A death-sentenced inmate has no incentive to pursue a speedy resolution of his case. Under the district court holding, and the rule advocated by Petitioner, however, any death-sentenced inmate could hold back on making claims to the state courts repeatedly and ask the district court to stay resolution of his case anytime he "discovers" the claims that he has not previously asserted in the state courts. There is a powerful incentive for a death-sentenced defendant to do this. The rule Petitioner advocates would eliminate the salutary effect of the AEDPA statute of limitations in this and other capital cases. Finality would be undermined, and, as a practical matter, eliminated. Petitioner will have no incentive to first exhaust his state remedies and then come to the federal courts. Duncan, 533 U.S. at 180.

Petitioner will point out, of course, that he is put to the choice of either asserting exhausted issues, or, if he accepts dismissal, risking that he will not be permitted to have his case decided in the federal courts. This choice is the necessary corollary of an effective statute of limitations. This Court has stated that petitioners will be required to exhaust their state remedies at the earliest available

opportunity. Duncan, 533 U.S. at 180. This Court has also stated that exhaustion should be required prior to petitioners seeking the remedy of federal habeas corpus. These principles would be weakened, or eliminated, if Petitioner's rule were adopted. Because the Eighth Circuit correctly decided this case, certiorari should be denied.

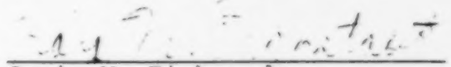
CONCLUSION

Respondent requests that certiorari be denied. In the alternative, since both parties recognize that a conflict between the circuit courts of appeals exists, the matter might reasonably be held without ruling on the Petition pending the Court's decision in Pliler v. Ford, No. 03-221.

Dated this 1st day of March, 2004.

Respectfully submitted,

LAWRENCE E. LONG
ATTORNEY GENERAL



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APPENDIX

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STATE OF SOUTH DAKOTA)
:SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

CHARLES RUSSELL RHINES,
Petitioner,

vs.

DOUGLAS WEBER,
Warden of the South Dakota
State Penitentiary,
Respondent.

CIVIL FILE NO. 96-1070

SECOND AMENDED APPLICATION
WRIT OF HABEAS CORPUS

Comes now the petitioner, Charles Russell Rhines, a prisoner in the South Dakota State Penitentiary, by and through his court-appointed counsel of record on this habeas corpus proceeding, Michael W. Hanson, and hereby moves the Circuit Court of Pennington County for a writ of habeas corpus under SDCL §21-17. This application is based on the following grounds:

1. Petitioner is currently a prisoner in the South Dakota State Penitentiary, Sioux Falls, South Dakota. Petitioner is under a sentence of death entered on January 29, 1993, for his conviction of first degree murder. A copy of the judgement is attached to this application.

2. Petitioner's conviction and death sentence have been affirmed on appeal by the South Dakota Supreme Court, State v. Rhines, 1996 S.D. 55, 548 N.W. 2d 415; and the United States Supreme Court has declined to review the appellate judgement.

3. That the officer by whom petitioner is so imprisoned and so restrained is Douglas Weber, Warden, South Dakota State Penitentiary.

4. The Judgement of Conviction and Sentence and resulting restraint is illegal and unconstitutional, for the following reasons:

1.

BEST AVAILABLE COPY

A. That Petitioner during the trial preparation phase, trial and appellate phase of his case had ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution. Said assistance of counsel was ineffective for the following reasons:

1. Two of petitioner's court appointed attorneys Joseph M. Butler and Michael Stonefield never met with petitioner before the start of the trial, except for a brief meeting at the initial appearance. That the assistance of these two attorneys was ineffective because of their complete lack of pre-trial preparation.

2. That only one of the petitioner's three court appointed attorneys met with him in the jail before the trial started. This attorney was Wayne F. Gilbert. Petitioner has now learned that Wayne F. Gilbert was suffering from mental depression during this time period. Furthermore, it is believed that he was engaged in criminal or other conduct in violation of the code of professional responsibility during this time period. This is evidenced by the fact that after the trial Wayne F. Gilbert voluntarily turned in his license to practice law and was disbarred. It has now been learned that he plead guilty to theft and received a suspended imposition of sentence. These factors make his representation ineffective within the meaning of the Sixth Amendment to the United States Constitution.

3. That Petitioner's attorneys failed to cross examine some of the prosecution's witnesses.

4. That Petitioner's attorneys failed to call a witness who lived in Rapid City and was available and willing to

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give mitigation evidence.

5. That petitioner's attorney Joseph Butler told the jury that he believed in and supported the death penalty.

6. That petitioner's attorney failed to raise the issue, in their appellate arguments, that the trial court's refusal to answer the jury's questions on prison life, that were submitted by them, violated due process.

7. That petitioner's attorneys failed to cite the case of Simmons v. South Carolina, 512 U.S. 154 (1994), in support of any claim that the trial court's refusal to answer the jury's questions on prison life violated due process.

8. That petitioner's attorneys failed to effectively argue that the death sentence in this case was disproportionate to the facts of the case and to other similar factual situations.

9. That Wayne Gilbert remained as petitioner's attorney when it was found out that a secretary in his office was the wife of the lead investigator of this case for the Rapid City Police Department.

10. That petitioner's attorneys failed to communicate with petitioner and get his input on matters concerning the trial.

11. Petitioner's attorneys were unprepared for the voir dire portion of the trial and conducted an ineffective voir dire.

12. Petition's attorneys were unprepared for the trial and penalty phase of the trial and were ineffective.

13. That Petitioner's attorneys were ineffective

and committed prejudicial error by not making formal motion for a change of venue, on the grounds of adverse pre-trial publicity and forcing the trial judge to rule on the issue and thus preserving it for appellate review.

14. That Petitioner's attorneys were ineffective and committed prejudicial error by telling the jury during the voir dire stage of the trial that the Petitioner was homosexual.

15. That petitioner's attorneys were ineffective and committed prejudicial error, by not filing a motion and seeking an order, to prevent the prosecution from bring up evidence or testimony that the Petitioner was homosexual.

16. Petitioner's attorneys were ineffective and committed prejudicial error by not objecting to the prosecutor's attempts to get the medical examiner to say that the victim had been tied up before he died, when they knew from personal conversations with the medical examiner that he could not so determine.

17. Petitioner's attorneys were ineffective and committed prejudicial error by not objecting to the last minute introduction of the Victim Impact Statement or in the alternative not asking for a continuance so that they could prepare a rebuttal.

18. Petitioner's attorneys were ineffective and committed prejudicial error by not objecting to the reading of the victim impact statement by the victim's mother, instead of a disinterested third party.

19. Petitioner's attorneys were ineffective and committed prejudicial error by not making a motion to allow the petitioner to give an unsworn allocation to the jury at the penalty

phase of the trial.

20. Petitioner's attorneys were ineffective and committed prejudicial error, by not arguing that the police officer's statement, that there had been no executions in South Dakota since 1947, was an enticement to get petitioner to confess and that the state had implied that there was no real possibility of receiving a death sentence if he confessed.

21. Petitioner's attorneys were ineffective and committed prejudicial error, by not approaching the Prosecutor about dropping the intention to seek the death penalty, if petitioner would testify about the full involvement of Sam Harter in this case.

22. Petitioner's attorneys were ineffective and committed prejudicial error, by not submitting a proposed jury instruction for the penalty phase of the trial, that would instruct the jury that you are not to consider the number of possible aggravated circumstances, but to consider only if the state has proved the existence of one beyond a reasonable doubt.

23. Petitioner's attorneys were ineffective and committed prejudicial error by not submitting a proposed jury instructions for the penalty phase of the trial, that would instruct the jury that they were not to look at unrelated and separate possible aggravated circumstances and combine them to find the existence of one.

24. Petitioner's attorneys were ineffective and committed prejudicial error by never investigating Petitioner's background so that an effective mitigation argument could be raised at the penalty phase of the trial.

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25. Petitioner's attorneys were ineffective and committed prejudicial error, in not attacking Heather Shepard's testimony, on the grounds that the police reports show that they clearly suggested to her the things necessary to corroborate Petitioner's confession.

26. Petitioner's attorney's were ineffective and committed prejudicial error in not attacking the victim impact statement with the evidence they had that the victim had not been faithful to his fiancee.

B. That a constitutional law violation occurred when the trial court refused to suppress Charles Rhine's statements of June 19 and 21, 1992.

C. That the trial court's excusing for cause prospective juror Diane Stoeffler, violated due process and equal protection of the laws.

D. The State's calculated and selective use of peremptory challenges to exclude prospective jurors with reservations about the death penalty violated due process.

E. That the trial court's refusal to answer the questions submitted by the jury on the subject of "the reality of Life Without Parole", violated due process.

F. The South Dakota capital punishment statutes violate due process and equal protection of the law.

G. Charles Rhines was denied due process of law by the trial court allowing victim impact testimony.

H. The evidence was insufficient to sustain the jury's finding of torture under aggravating circumstances §23A-27A-1 (6), with resulting due process of law violation.

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I. The trial court erred in its instructions regarding aggravating circumstance §23A-27A-1 (6), depravity of mind, so as to commit a due process of law violation.

J. The trial court erred in its instructions regarding aggravating circumstance §23A-27A-1 (3), so as to commit a due process of law violation.

K. The jury's consideration of one or more invalid aggravating circumstances violated due process and equal protection of the law.

L. The trial court by allowing into evidence statements made by Rhines concerning the justice system violated due process.

M. The trial court in refusing to appoint a forensic communication expert denied Charles Rhines due process of law.

N. The trial court by refusing several of Rhines' proposed jury instructions denied him due process.

O. The death sentence was imposed under the influence of passion, prejudice or other arbitrary factors so as to constitute a violation of equal protection of the laws and due process.

P. The imposition of a death sentence in this case was disproportionate to all the other homicide cases in South Dakota so as to violate equal protection of the law and due process.

Q. The use of State v. Moeller by the state, to show that the death sentence was not disproportionate violated due process.

R. The prosecutor committed prejudicial misconduct, in violation of Petitioner's Due Process Rights, when the prosecutor asked the medical examiner, if the victim was tied up before or after death, when the prosecutor knew in advance that the medical examiner could not determine when the victim had been tied up.

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S. The prosecutor committed prejudicial misconduct in violation of Petitioner's Due Process Rights, by never coming out and saying that he would introduce a victim impact statement until the day the penalty phase of the trial started.

T. The prosecutor committed prejudicial misconduct in violation of Petitioner's Due Process Rights, when he made reference to the Petitioner "gutting" the victim, when the evidence clearly showed that no such thing occurred.

U. The prosecutor committed prejudicial misconduct in violation of Petitioner's Due Process Rights, by introducing into evidence enlarged photographs of the victim, in which the stab wounds were disproportionately enlarged, to reflect an attempt to "gut" the victim.

WHEREFORE, Petitioner requests:

A. The Court issue a Writ of Habeas Corpus, requiring Respondent to serve and file an Return to said Writ;

B. For the Court to schedule a hearing to determine the legality of the Pennington County conviction of Charles Russell Rhines, to determine if the Judgement of Conviction should be declared null, void, and unconstitutional and if he should be relieved of all restraints imposed thereby; and

C. Whether a new trial should be ordered, or in the alternative if a new penalty trial should be ordered and;

D. For such other and further relief as the Court deems just, fair and equitable.

Dated this 17th day September, 1997.

8

Michael W. Hanson

Michael W. Hanson
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Pennington County, S.D.
FILED
IN CIRCUIT COURT
SEP 19 1997
Renae Truman, Clerk of Courts
By _____ Deputy

9

AO 241 (Rev. 5/85) PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District SOUTH DAKOTA, SOUTHERN DIVISION	
Name CHARLES RUSSELL RHINES	Prisoner No. 28414	Case No. CIV00-4032

Place of Confinement: SOUTH DAKOTA STATE PENITENTIARY, SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA

FILED
FEB 22 2000

Name of Petitioner (include name under which convicted): CHARLES RUSSELL RHINES

Name of Respondent (authorized person having custody of petitioner): V. DOUGLAS WEBER, WARDEN: SOUTH DAKOTA STATE PENITENTIARY

The Attorney General of the State of SOUTH DAKOTA: MARK BARNETT

PETITION

1. Name and location of court which entered the judgment of conviction under attack SEVENTH JUDICIAL CIRCUIT COURT, RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

2. Date of judgment of conviction JANUARY 2 , 1 3

3. Length of sentence DEATH AND TEN YEARS

4. Nature of offense involved (all counts) FIRST DEGREE MURDER AND THIRD DEGREE BURGLARY

5. What was your plea? (Check one)
   (a) Not guilty ☒
   (b) Guilty ☐
   (c) Nolo contendere ☐
   If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☒
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

10

9. If you did appeal, answer the following:
   (a) Name of court SOUTH DAKOTA SUPREME COURT
   (b) Result CONVICTION AND SENTENCE AFFIRMED
   (c) Date of result and citation, if known MAY 16, 1996:STATE V. RHINES: 1996 SD 55; 548 N.W. 2d 415
   (d) Grounds raised PLEASE SEE ATTACHED SHEET #1

   (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
   (1) Name of court NO HIGHER STATE COURT AVAILABLE FOR REVIEW
   (2) Result
   (3) Date of result and citation, if known
   (4) Grounds raised

   (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
   (1) Name of court UNITED STATES SUPREME COURT
   (2) Result DENIAL OF CERTIORARI
   (3) Date of result and citation, if known DECEMBER 1996 CITATION UNKNOWN
   (4) Grounds raised EIGHTH AMENDMENT VIOLATIONS IN THREE PARTICULARS

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
    Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:
    (a) (1) Name of court SEVENTH JUDICIAL CIRCUIT COURT
    (2) Nature of proceeding SOUTH DAKOTA HABEAS CORPUS
    (3) Grounds raised PLEASE SEE ATTACHMENT #2

11

AO 241 (Rev. 5/85) PET ON UNDER 28 USC § 2254 FOR WR OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District SOUTH DAKOTA, SOUTHERN DIVISION	
Name CHARLES RUSSELL RHINES	Prisoner No 28414	Case No. CIV00-4032

Place of Confinement: SOUTH DAKOTA STATE PENITENTIARY, SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA

FILED
FEB 22 2000
CLERK

Name of Petitioner (include name under which convicted): CHARLES RUSSELL RHINES

Name of Respondent (authorized person having custody of petitioner): v. DOUGLAS WEBER, WARDEN: SOUTH DAKOTA STATE PENITENTIARY

The Attorney General of the State of SOUTH DAKOTA: MARK BARNETT

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6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☒
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

9. If you did appeal, answer the following:
   (a) Name of court SOUTH DAKOTA SUPREME COURT
   (b) Result CONVICTION AND SENTENCE AFFIRMED
   (c) Date of result and citation, if known MAY 16, 1996:STATE V. RHINES: 1996 SD 55; 548 N.W. 2d 415
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      (2) Result DENIAL OF CERTIORARI
      (3) Date of result and citation, if known DECEMBER 1996 CITATION UNKNOWN
      (4) Grounds raised EIGHTH AMENDMENT VIOLATIONS IN THREE PARTICULARS

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
    Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:
    (a) (1) Name of court SEVENTH JUDICIAL CIRCUIT COURT
    (2) Nature of proceeding SOUTH DAKOTA HABEAS CORPUS
    (3) Grounds raised PLEASE SEE ATTACHMENT #2

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes☒ No☐

(5) Result DENIAL OF WRIT

(6) Date of result OCTOBER 1998 (APPEALED TO SD S.CT.: DENIED FEB 2000)

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes☐ No☐

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes☒ No☐
(2) Second petition, etc. Yes☐ No☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12 State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corp proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise a grounds which you may have other than those listed if you have exhausted you state court remedies with respect to ther However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base yo allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege fact The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of tl nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorab to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(h) Denial of right of appeal.

A. Ground one: DENIAL OF FAIR AND IMPARTIAL HEARING UNDER SIXTH AMENDMENT TO US CONSTITUTION

Supporting FACTS (state *briefly* without citing cases or law) ON OCTOBER 18, 1995 A LOCAL TE VISION STATION AIRED A NEWS PROGRAM FEATURING A SD S.CT. JUSTICE AT- TENDING/PARTICIPATING IN APPEAL OF CONVICTION/SENTENCE. THIS S.CT. JUSTICE WAS APPOINTED TO COURT SUBSEQUENT TO APPELLANT'S TRIAL AND HAD PRESIDED OVER APPELLANT'S TRIAL.
SD S.CT. JUSTICE JOHN K. KONENKAMP APPARENTLY PARTICIPATED IN THE APPEAL PROCESS OF A CASE HE PRESIDED OVER AS A TRIAL COURT JUDGE.

B. Ground two: DENIAL OF FAIR AND IMPARTIAL TRIAL CONTRARY TO THE SIXTH AMENDMENT TO THE US CONSTITUTION

Supporting FACTS (state *briefly* without citing cases or law) DURING VOIR DIRE, PROSECUTION EXCLUDED VENIREPERSON DIANNE STAEFFLER BECAUSE SHE HAD RESERVATIONS ABOUT THE DEATH PENALTY. COURT EXCLUDED VENIREPERSON FOR HER VIEWS ON CAPITAL PUNISHMENT, EVEN THOUGH VENIREPERSON HAD STATED SHOULD COULD CONSIDER THE DEATH PENALTY AS A POSSIBLE PUNISHMENT.

C. Ground three: DENIAL OF FAIR AND IMPARTIAL TRIAL. SIXTH AMENDMENT TO THE US CONSTITUTION.

Supporting FACTS (state *briefly* without citing cases or law) WITNESS GLEN WISHARD COMMITTEI PERJURY TESTIFYING TO APPELLANT'S "STATE OF MIND" SEVERAL HOURS AFTEI COMMISSION OF OFFENSE. PROSECUTOR KNEW WITNESS WISHARD WAS TESTIFY- ING FALSELY AND DID NOTHING TO CORRECT TESTIMONY.

D. Ground four: denial of sixth amendment. denial of effective assistance OF COUNSEL.

Supporting FACTS (state *briefly* without citing cases or law) APPELLANT WAS APPOINTED THREE (3) ATTORNEY'S TO REPRESENT HIM AT TRIAL. ATTORNEY #1-WAYNE F. GILE HAS SUBSEQUENTLY BEEN DISBARRED FOR ILLEGAL ACTIVITIES PRIOR TO AND DURING PERIOD OF REPRESENTATION. #2- WAS PRIMARILY A CIVIL LITIGATOR WITH LIMITED CRIMINAL TRIAL EXPERIENCE. #3-WAS OVER-WORKED PUBLIC DEF ENDER WHO HAD TO SHOULDER MOST OF WORK LOAD - IN ADDITION TO BEING APPOINTED AS APPELLANT'S "INVESTIGATOR."

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: I ATTEMPTED TO HAVE PREVIOUS ATTORNEY, MICHAEL W. HANSON, PRESENT GROUND 1 BUT HE DID NOT INVESTIGATE THE LEADS I GAVE HIM. APPARENTLY HE BELIEVED IT WOULD BE T NO AVAIL TO ATTACK SD S.CT. ON IT'S OWN GROUND, SO TO SPEAK. I CONCUR.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein.
(a) At preliminary hearing NO PRELIMINARY HEARING: GRAND JURY INDICTMENT

(b) At arraignment and plea 1) WAYNE F. GILBERT, CURRENT ADDRESS UNKNOWN. 2) JOSEPH M. BUTLER, 818 ST. JOSEPH ST. RAPID CITY, SD. 3) MICHAEL STONEFIELD, PENN- INGTON COUNTY PUBLIC DEFENDERS OFFICE, RAPID CITY, SD

field: PENNINGTON COUNTY PUBLIC DEFENDERS OFFICE, RAPID CITY, SD 57701
(c) At trial SAME AS (b)

(d) At sentencing Same as (b)

(e) On appeal WAYNE F. GILBERT & MICHAEL STONEFIELD

(f) In any post-conviction proceeding MICHAEL W. HANSON, 505 W. 9th St. Sioux Falls,

(g) On appeal from any adverse ruling in a post-conviction proceeding Same as in (f)

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and th same time?
Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒
(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to b served in the future?
Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on
FEBRUARY 17, 2000
(date)

Signature of Petitioner
CHARLES R. RHINES, PRO SE

GROUND FIVE: SIXTH AMENDMENT TO THE US CONSTITUTION. DENIAL OF FAIR AND IMPARTIAL JURY.

SUPPORTING FACTS: SOUTH DAKOTA CAPITAL PUNISHMENT JURIES ARE SELECTED TO SEAT A TRIBUNAL ORGANIZED TO RETURN A VERDICT OF GUILTY IN THE GUILT PHASE OF CAPITAL TRIALS AND DEATH IN THE PENALTY PHASE THROUGH "DEATH QUALIFICATION." THIS CAPITAL TRIAL/SENTENCING JURY WAS ORGANIZED TO RETURN THE VERDICTS REQUESTED BY THE PROSECUTION BY WEEDING OUT ALL VENIREPERSONS FROM THE JURY POOL WHO HAD THE SLIGHTEST HESITANCY CONCERNING THE USE OF THE DEATH PENALTY.

ATTACHMENT #'

GROUNDS RAISED ON DIRECT APPEAL.

1) TRIAL COURT ERRED BY NOT SUPPRESSING STATEMENTS

2) TRIAL COURT ERRED IN EXCUSING VENIREPERSON FOR CAUSE.

3) CALCULATED AND SELECTIVE USE OF PEREMPTORY CHALLENGES CREATED A JURY DEVOID OF THOSE WITH OPPOSITION TO CAPITAL PUNISHMENT.

4) CONSTITUTIONALLITY OF SOUTH DAKOTA CAPITAL PUNISHMENT STATUTE.

5) TRIAL COURT ERRED BY ALLOWING VICTIM IMPACT TESTIMONY

6) EVIDENCE WAS INSUFFICIENT TO SUSTAIN VERDICT OF TORTURE UNDER AGGRAVATING CIRCUMSTANCE § 23A-27A-1(6).

7) TRIAL COURT ERRED IN IT'S INSTRUCTIONS REGARDING AGGRAVATING CIRCUMSTANCE § 23A-27A-1(6).

8) TRIAL COURT ERRED IN IT'S INSTRUCTIONS REGARDING AGGRAVATING CIRCUMSTANCE 23A-27A-1(3).

9) THE JURY'S CONSIDERATION OF ONE OR MORE INVALID AGGRAVATING CIRCUMSTANCES REQUIRES REVERSAL OF THE DEATH SENTENCE.

10) TRIAL COURT ERRED BY ALLOWING INTO EVIDENCE STATEMENTS MADE BY APPELLANT CONCERNING THE JUSTICE SYSTEM.

11) TRIAL COURT ERRED IN REFUSING TO APPOINT A FORENSIC COMMUNICATION EXPERT.

12) TRIAL COURT ERRED BY REFUSING SEVERAL OF APPELLANT'S JURY INSTRUCTIONS.

13) APPELLANT'S DEATH SENTENCE WAS IMPOSED UNDER THE INFLUENCE OF PASSION, PREJUDICE OR OTHER ARBITRARY FACTORS.

14) THIS COURT (SD S.Ct.) SHOULD IT"S STATUTORILY REQUIRED PROPORTIONALLITY REVIEW USING A BROAD POOL OF "SIMILAR CASES." AND SHOULD ALLOW PRESENTATION AT A LATER TIME OF FURTHER EVIDENCE ON PROPORTIONALLITY.

ATTACHMENT #2
PAGE 1

GROUNDS RAISED ON SOUTH DAKOTA HABEAS CORPUS REVIEW.

1) THAT DURING TRIAL PREPARATION, TRIAL AND APPELLATE PHASES. APPELLANT HAD INEFFECTIVE ASSISTANCE OF COUNSEL.

2) THAT A CONSTITUTIONAL LAW VIOLATION OCCURRED WHEN TRIAL COURT REFUSED TO SUPPRESS APPELLANT'S STATEMENT'S OF JUNE 19 AND JUNE 21, 1992.

3) THAT THE TRIAL COURT VIOLATED DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN EXCUSING VENIREPERSON DIANE STAEFFLER.

4) CALCULATED AND SELECTIVE USE OF PEREMPTORY CHALLANGES CLEARED THE JURY OF ANY VENIREPERSON WITH RESERVATIONS ABOUT CAPITAL PUNISHMENT.

5) THAT THE TRIAL COURT'S REFUSAL TO ANSWER THE QUESTIONS SUBMITTED BY THE JURY CONCERNING THE "REALITY OF LIFE WITHOUT PAROLE" VIOLATED DUE PROCESS.

6) THE SOUTH DAKOTA CAPITAL PUNISHMENT STATUTES VIOLATE DUE PROCESS AND EQUAL PROTECTION OFTHE LAW.

7) APPELLANT WAS DENIED DUE PROCESS BY THE TRIAL COURT ALLOWING VICTIM IMPACT TESTIMONY.

8) EVIDENCE WAS INSUFFICIENT TO SUSTAIN VERDICT OF TORTURE UNDER AGGRAVATING CIRCUMSTANCE 23A-27A-1(6) RESULTING IN VIOLATION OF DUE PROCESS OF LAW.

9) TRIAL COURT ERRED IN IT'S INSTRUCTIONS REGARDING AGGRAVATING CIRCUMSTANCE 23A-27A-1(6), DEPRAVITY OF MIND, RESULTing IN A VIOLATION OF DUE PROCESS.

10) TRIAL COURT ERRED IN IT'S INSTRUCTIONS REGARDING AGGRAVATING CIRCUMSTANCE 23A-27A-1(3), RESULTING IN A VIOLATION OF DUE PROCESS.

11) THE JURY'S CONSIDERATION OF ONE OR MORE INVALID AGGRAVATING CIRCUMSTANCE VIOLATED DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

12) THE TRIAL COURT VIOLATED DUE PROCESS IN REFUSING TO APPOINT A FORENSIC COMMUNICATION S EXPERT.

13) TRIAL COURT VIOLATED DUE PROCESS BY REFUSING SEVERAL OF APPELLANT'S JURY INSTRUCTIONS.

14) THE DEATH SENTENCE WAS IMPOSED UNDER THE INFLUENCE OF PASSION, PREJUDICE OR OTHER ARBITRARY FACTORS SO AS TO CONSTITUTE A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

15) THE IMPOSITION OF A DEATH SENTENCE IN THIS CASE WAS DISPROPORTIONATE TO ALL OTHER HOMICIDE CASES IN SOUTH DAKOTA SO AS TO VIOLATE EQUAL PROTECTION OF THE LAW AND DUE PROCESS.

16) THE USE OF STATE VS. MOELLER BY THE STATE OF SOUTH DAKOTA, TO SHOW THAT THE DEATH SENTENCE WAS NOT DISPROPORTIONATE VIOLATED DUE PROCESS.

17) THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT WHEN HE ASKED THE MEDICAL EXAMINER IF THE VICTIM WAS TIED UP BEFORE OR AFTER DEATH, WHEN THE PROSECUTOR KNEW IN ADVANCE THE MEDICAL EXAMINER COULD NOT DETERMINE WHEN THE VICTIM WAS TIED UP, RESULTING IN A VIOLATION OF DUE PROCESS OF THE APPELLANT'S RIGHTS.

18) THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT IN VIOLATION OF THE APPELLANT'S DUE PROCESS RIGHTS BY NEVER COMING OUT AND SAYING HE WOULD INTRODUCE A VICTIM IMPACT STATEMENT UNTIL THE DAY OF THE PENALTY PHASE OF THE TRIAL STARTED.

19) THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHTS WHEN HE MADE REFERENCE TO THE APPELLANT "GUTTING".THE VICTIM, WHEN THE EVIdence CLEARLY SHOWED NO SUCH THING HAD OCCURRED.

20) THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHTS, BY INTRODUCING INTO EVIDENCE ENLARGED PHOTOGRAPHS OF THE VICTIM, IN WHICH THE STAB WOUNDS WERE DISPROPORTIONATELY ENLARGED TO REFLECT THE ALLEGED ATTEMPT TO "GUT" OR "DEGUT" THE VICTIM.

STATE OF SOUTH DAKOTA,)
)SS.
COUNTY OF PENNINGTON.)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

File No. 93-81

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

CHARLES RUSSELL RHINES,
DOB: 7/11/56
PCN #: 1674495

Defendant.

JUDGMENT

On the 29th day of January, 1993, at the hour of 9:00 o'clock a.m., the Defendant, CHARLES RUSSELL RHINES, being present personally and being represented by and through his attorneys, Joseph Butler, Wayne Gilbert, and Mike Stonefield, each of Rapid City; the State being represented by State's Attorney, Dennis A. Groff, and Deputy State's Attorney, Mark A. Vargo; the Defendant having previously been arraigned on an Indictment alleging the offense of COUNT I: FIRST DEGREE MURDER (FELONY), committed on or about March 8, 1992, in violation of SDCL 22-16-4; the Defendant having previously entered a plea of Not Guilty to COUNT I of the Indictment as charged; a jury trial having been held before this Court commencing the 4th day of January, 1993, with respect to said offense; the jury having returned its verdict of Guilty of the offense of COUNT I: FIRST DEGREE MURDER (FELONY) on January 22, 1993; a pre-sentence hearing having been held before the jury commencing on the 25th day of January, 1993; the jury having returned its unanimous verdict with a finding of three aggravating circumstances and a

recommendation that the the death sentence be imposed, and the Defendant having been fully advised of his rights, and the Court having affixed this day as the date for pronouncing sentence; the Defendant having been asked whether there was any legal cause to show why a judgment should not be pronounced against him in accordance with the law and no cause being shown; it is hereby

ORDERED AND ADJUDGED, and the judgment and sentence of this Court is that you, CHARLES RUSSELL RHINES, upon your conviction for the crime of FIRST DEGREE MURDER (FELONY), shall suffer the death penalty, said penalty to be inflicted within the walls of the South Dakota State Penitentiary in the manner prescribed by the statutes of the State of South Dakota, and it is further

ORDERED, that the week of August 22, 1993, be and the same is hereby appointed as the week within which this death sentence shall be executed, and it is further

ORDERED, that the Defendant, CHARLES RUSSELL RHINES, is hereby remanded to the custody and control of the Sheriff of Pennington County, South Dakota, to be by him delivered to the Warden of the South Dakota State Penitentiary at Sioux Falls, South Dakota, within ten (10) days from the date hereof for the execution of the sentence for the offense of MURDER IN THE FIRST DEGREE, to be held by him pending the final determination of the appeals in this matter, which are automatic, and said sentence to be executed upon final determination of said appeals.

Dated this 29th day of January, 1993.

BY THE COURT:

The Honorable John K. Konenkamp
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:

/s/Bonnie Fitzgerald
Clerk of Courts

By Deputy

(SEAL)

Pennington County, S.D.
FILED
IN THE CIRCUIT COURT
JAN 29 1993
Bonnie Fitzgerald, Clerk
By Deputy

NOTICE OF RIGHT TO APPEAL

You, CHARLES RUSSELL RHINES, are hereby notified that pursuant to SDCL 23A-27A-9, that the Clerk of Courts of the Seventh Judicial Circuit, within ten (10) days after receiving the transcript of this trial, shall transmit the entire record and transcript of the Supreme Court together with a Notice prepared by the Clerk and a report prepared by the trial judge. The Notice shall set forth the title and docket number of this case, your name and the names and addresses of your attorneys, a narrative statement of the Judgment, the offense, and the punishment prescribed.

You are further notified that you have a right to appeal as provided for by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of the State of South Dakota and the State's Attorney of Pennington County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within Thirty (30) days from the date that this Judgment is filed with said Clerk.

BEST AVAILABLE COPY